

Order

Michigan Supreme Court
Lansing, Michigan

Entered: December 18, 2001

Maura D. Corrigan,
Chief Justice

99-55

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Justices

Amendment and Renumbering of
Rules 5.750-5.756 and 5.781-5.783
of the Michigan Court Rules

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, Rules 5.750-5.756 and 5.781-5.783 of the Michigan Court Rules are amended and renumbered as MCR 3.800-3.806 and 3.613-3.615, respectively, to be effective May 1, 2002.

[The present language is amended as indicated below.]

Rule 3.613 ~~5.781~~ Change of Name

[Changes are shown from former MCR 5.781.]

- (A) [Formerly MCR 5.781(A), redesignated, but otherwise unchanged.]
- (B) Minor's Signature. A petition for a change of name by a minor need not be signed in the presence of ~~the probate~~ a judge.
- (C) Notice to Noncustodial Parent. Service on a noncustodial parent of a minor who is the subject of a petition for change of name shall be made in the following manner.
 - (1) [Formerly 5.781(C)(1), redesignated, but otherwise unchanged.]
 - (2) Address Unknown. If the noncustodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, that parent shall be served with a notice of hearing ~~as required by MCR 5.106~~ publishing in a newspaper and filing a proof of service as provided by MCR 2.106(F) and (G). The notice must be published one

time at least 14 days before the date of the hearing, must include the name of the noncustodial parent and a statement that the result of the hearing may be to bar or affect the noncustodial parent's interest in the matter, and that publication must be in the county where the court is located unless a different county is specified by statute, court rule, or order of the court. A notice published under this subrule need not set out the contents of the petition if it contains the information required under subrule (A). A single publication may be used to notify the general public and the noncustodial parent whose address cannot be ascertained if the notice contains the noncustodial parent's name.

(D) [Formerly MCR 5.781(D), redesignated, but otherwise unchanged.]

(E) Confidential Records. In cases where the court orders that records are to be confidential and that no publication is to take place, records are to be maintained in a sealed envelope marked confidential and placed in a private file. Except as otherwise ordered by the court, only the original petitioner may gain access to confidential files, and no information relating to a confidential record, including whether the record exists, shall be accessible to the general public.

Rule 3.614 ~~5.782~~ Health Threats to Others

[Changes are shown from former MCR 5.782.]

(A) Public Health Code, Application. Except as modified by this rule, proceedings relating to carriers of contagious diseases who pose threats to the health of others under part 52 of the public health code are governed by the rules generally applicable to ~~probate court~~ civil proceedings.

(B) [Formerly MCR 5.782(B), redesignated, but otherwise unchanged.]

(C) Interested Parties. The interested parties in a petition for treatment of infectious disease are the petitioner and the respondent.

~~(D)~~ (D) [Formerly MCR 5.782(C), redesignated, but otherwise unchanged.]

~~(E)~~ (E) Commitment to Facility.

- (1) [Formerly MCR 5.782(D) (1), redesignated, but otherwise unchanged.]
- (2) Reevaluation at Request of Respondent. Once within any six-month period or more often by leave of the court, an individual committed to a facility for treatment of an infectious disease may file in the ~~probate~~ court a petition for a new Commitment Review Panel recommendation on whether the patient's commitment should be terminated. Within 14 days after receipt of the report of the reconvened Commitment Review Panel, the court shall review the panel's report and enter an order. The court may modify, continue or terminate its order of commitment without a hearing.

Rule 3.615 ~~5.783~~ Parental Rights Restoration Act Proceedings

[Changes are shown from former MCR 5.783.]

- (A) Applicable Rules. A proceeding by a minor to obtain a waiver of parental consent for an abortion shall be governed by the rules applicable to ~~probate~~ civil proceedings except as modified by this rule.
- (B)-(J) [Formerly MCR 5.783(B)-(J), redesignated, but otherwise unchanged.]
- (K) Order.
 - (1) [Formerly MCR 5.783(K) (1), redesignated, but otherwise unchanged.]
 - (2) Order Denying Waiver, Notice of Appeal, Appointment of Counsel, Preparation of Transcript. If the order denies relief, the court shall endorse the time and date on the order. The order shall be served on the minor's attorney or, if none, the minor along with
 - (a) [Formerly MCR 5.783(K) (2) (a), redesignated, but otherwise unchanged.]
 - (b) a notice that, if the minor desires to appeal, the minor must file the notice of appeal with the ~~probate~~ court within 24 hours.
- (3) Appeal.

(a) Upon receipt of a timely notice of appeal, the ~~probate~~ court must appoint counsel and order that the transcript be prepared immediately and two copies filed within 72 hours. If the minor was represented by counsel in the ~~probate~~ court proceedings, the court must reappoint the same attorney unless there is good cause for a different appointment. As soon as the transcript is filed, the court shall forward the file to the Court of Appeals.

(b)-(f) [Formerly MCR 5.783(K)(3)(b)-(f), redesignated, but otherwise unchanged.]

Subchapter 3.800 Adoption

[Rules in this subchapter were formerly found in Subchapter 5.750. Changes are shown from the language of former MCR 5.750-5.756.]

Rule 3.800 ~~5.750~~ Applicable Rules

Except as modified by MCR ~~5.751-5.755~~ 3.801-3.806, adoption proceedings are governed by the rules generally applicable to ~~probate~~ civil proceedings.

Rule 3.801 ~~5.751~~

[Formerly MCR 5.751, redesignated, but otherwise unchanged.]

Rule 3.802 ~~5.752~~ Manner and Method of Service

(A) Service of Papers.

(1) ~~Personal Service.~~ A notice of intent to release or consent pursuant to MCL 710.34(1); ~~MSA 27.3178(555.34)(1)~~ may only be served by personal service by a peace officer or a person authorized by the court.

(2) ~~Service Through Third Parties.~~ The following must be served either by personal service under MCR 5.105(B)(1) or by certified mail, return receipt requested;

~~(a) a notice of petition to identify a putative father~~

~~and determine or terminate his rights; and~~

~~(b) a petition to terminate the parental rights of a noncustodial parent.~~

Notice of a petition to identify a putative father and to determine or terminate his rights, or a petition to terminate the rights of a noncustodial parent, must be served on the individual or the individual's attorney in the manner provided in MCR 5.105(B)(1)(a) or (b).

(3) Except as provided in subrules (B) and (C), all other papers may be served by mail under MCR ~~5.105~~ 2.107(C)(3).

(B) Service When Identity or Whereabouts of Father is Unascertainable.

____ (1) If service cannot be made under subrule (A)(2)(a) because the identity of the father of a child born out of wedlock or the whereabouts of the identified father has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR ~~5.114(B)(1)~~ 2.114(B)(2), of the attempt to identify or locate the father. No further service is necessary before the hearing to identify the father and to determine or terminate his rights.

(2) [Formerly MCR 5.752(B)(2), redesignated, but otherwise unchanged.]

(C) Service When Whereabouts of Noncustodial Parent is Unascertainable. If service of a petition to terminate the parental rights of a noncustodial parent pursuant to MCL 710.51(6); ~~MSA 27.3178(555.51)(6)~~ cannot be made under subrule (A)(2)(b) because the whereabouts of the noncustodial parent has not been ascertained after diligent inquiry, the petitioner must file proof, by affidavit or by declaration under MCR ~~5.114(B)(1)~~ 2.114(B)(2), of the attempt to locate the noncustodial parent. If the court finds, on reviewing the affidavit or declaration, that service cannot be made because the whereabouts of the person has not been determined after reasonable effort, the court may direct any manner of substituted service of the notice of hearing, including service by publication.

Rule 3.803 ~~5.753~~

[Formerly MCR 5.753, redesignated, but otherwise unchanged.]

Rule 3.804 ~~5.754~~

[Formerly MCR 5.754, redesignated, but otherwise unchanged.]

Rule 3.805 ~~5.755~~

[Formerly MCR 5.755, redesignated, but otherwise unchanged.]

Rule 3.806 ~~5.756~~

[Formerly MCR 5.756, redesignated, but otherwise unchanged.]

~~Rule 5.750 — Applicable Rules~~

Redesignated as MCR 3.800.

~~Rule 5.751 — Papers, Execution~~

Redesignated as MCR 3.801.

~~Rule 5.752 — Manner and Method of Service~~

Redesignated as MCR 3.802.

~~Rule 5.753 — Financial Reports, Subsequent Orders~~

Redesignated as MCR 3.803.

~~Rule 5.754 — Consent Hearing~~

Redesignated as MCR 3.804.

~~Rule 5.755 — Temporary Placements~~

Redesignated as MCR 3.805.

~~Rule 5.756 — Rehearings~~

Redesignated as MCR 3.806.

~~Rule 5.781 — Change of Name~~

Redesignated as MCR 3.613.

~~Rule 5.782 — Health Threats to Others~~

Redesignated as MCR 3.614.

~~Rule 5.783 — Parental Rights Restoration Act Proceedings~~

Redesignated as MCR 3.615.

Staff Comment: The amendment and renumbering of MCR 5.750-5.756 and 5.781-5.783 as MCR 3.800-3.806 and 3.613-3.615, effective May 1, 2002, were proposed by the Family Division Joint Rules Committee. The statute creating the family division of circuit court gave it jurisdiction of a number of types of proceedings formerly heard in the probate court. See MCL 600.1021. The amendments move the rules governing adoptions, change of name, Parental Rights Restoration Act proceedings, and proceedings regarding persons who pose health threats to others, from Chapter 5, which contains probate court provisions, to Chapter 3. In addition, there are several modifications of the rules. The change-of-name rule will use the circuit court publication procedure. MCR 3.613(C)(2). A provision on confidentiality of records is added to the change-of-name rule. MCR 3.613(E). New subrule MCR 3.614(C) will specify the interested parties in a petition for treatment of infectious disease. (File No. 99-55.)

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.